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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/529,690	04/18/2000	ROLAND COX	JYG122USA	3166

7590 04/11/2003

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 04/11/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

529690

Applicant(s)

COX

Examiner

MILLEY

Group Art Unit

1616

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 1/21/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 13, 16-18, 20-30 is/are pending in the application.
- Of the above claim(s) 21-30 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 13, 16-18, 20 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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Receipt is acknowledged of amendment of //4/03. Applicant should indicate status at p.1, after the title, as a 371 application.

Newly submitted claims 21-30 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the new methods of manufacture are of patentably distinct subject matter and are not novel (see GB 2309461, p.1, lines 5-9, p.2, lines 15-17, p.4, lines 13-16 and table 1) nor are the methods seen as providing special technical features of manufacture, unexpected in the art.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 21-30 stand withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP§821.03.

Claims 13, 16-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kluft-WO9724484 in view of Lebrun et al EP 0047553.

The rejection of record is maintained-see p.10 of Kluft translation-a multitude of means of biocide incorporation to control, ultimately, fungi and mites include incorporation during fiber manufacture, as in now claimed. Since Kluft didn't specify some fungus were of greater importance to bed mites than others, general fungicides were exemplified, Lebrun however showed the significance of Aspergillus, but did not apply during manufacture. Given the information that Natamycin inhibits Aspergillus species growth (p.4, lines 25-28), and comomitlant reduction in mites (example 11 it

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would have been obvious to one of ordinary skill at the time of the instant invention in the art of fiber making for use in textile to be used in bedding, to control mites and fungus, to use the kluft fibers with biocide of lebrun and thus optimize effects by incorporation into the original fiber manufacture and thus also minimize application efforts and time.

Applicant's arguments filed 1/21/03 have been fully considered but they are not persuasive. Applicant's arguments have been persuasive, and we agree the methods of claim 13 not anticipated by Cox, absent mite address. However, it would constitute a cumulative reference to those presented under 35 USC 103, in accord with current claims. Kluff is seen to control mites; that is applicant's object, and stated claim language, in open guise. Lebrun seems to do it better; the particular aspergillus species seems to be of greater concern than applicants. One finds that the fine results Lebrun obtains from a broad spectrum fungicide are attributable to the growth inhibition of all 3 of the aspergillus species Lebrun addresses. Perhaps applicant's results also are attributable to growth inhibition of *A. penicilloides*, along with *A. glaucus* and *A. restrictus*. Applicant claims no thielojan and no concentration thus no claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP§706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 308-4242 for regular communications and 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy/tgd
April 8, 2003



NEIL S. LEVY
PRIMARY EXAMINER